IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.104/1999

1. Shri Hajresaae Hussainsaab
Haradgatti, about 59 years of age,
s/o. Hussainsaab Haradgatti,
labourer and his wife;

2. Smt. Aminabi,
about 49 years of age, daughter of
Kassimsaab, labourer and both r/o.
H.No. not known, Savnoor, Dharwar,
Karnataka and prsently at H.No. not
known, Agonda, Cancanoca, Goa. .... Appellants.

V/s.

1. Mr. Raosahab Busuppa,
of major age, driver of Truck
No.GDZ-6213, r/o. House No. not
known, Agonda, Canacona, Goa.

2. Shri Govind Barkelo Bandekar,
of major age, businessman, s/o.Barkelo
Bandekar and,

3. Smt. Sarita S. Bandekar,
major in age, housewife,
both r/o. H.No. not known,
Agonda, Canacona, Goa.

4. National Insurance Co.Ltd.,
with its branch at Marchon Building
Margao, Goa. .... Respondents.

Mr. V.G.P. Dukle, Advocate for the appellants.

CORAM : F.I. REBELLO, J.

DATE : JULY 10, 2003.

ORAL JUDGMENT :

The appellants who were the claimants, have preferred the present appeal against the order of

15.9.98, whereby the claim petition was rejected. The claimants had filed the claim petition on the ground that the deceased, the son of the claimant was working as cleaner with respondents No.2 and 3; the deceased was travelling in truck bearing registration No.GDZ 6213, driven by respondent No.2 at a fast speed and in a rash and negligent manner, from Agonda to Khola, loaded with laterite stones; when the vehicle reached at Morlem, on a slope respondent No.2 lost control over the truck, the truck went out of the tarred road and on account of which the deceased fell out from the truck and succumbed to his injuries. In the written statement filed the stand of the respondents No.1, 2 and 3 is that the deceased was working as a cleaner on truck bearing No. GDZ 6213 and, as such, he ought to have filed the claim before the Workmen's Compensation Court. They denied the income of the deceased being Rs.3500/- per month, but did not set out as to what was the salary considering the averments by the appellants herein that they were the employers. In paragraph 6, it was contended that the truck with laterite stones was proceeding from Agonda to Khola and the deceased-cleaner was sitting in the cabin in front and when they reached at Molorem on the ascending slope, the driver slowed down the speed because of the steep slope, suddenly the cleaner of the truck jumped out from the cabin of the truck and got injured. It was

contended that the truck was not being driven in rash and negligent manner and the injuries were caused on account of the deceased's own negligence.

Insurance Company filed the written statement setting out that there was an insurance policy and they will be governed by the provisions of the insurance policy and that their liability would be restricted to Rs.1,50,000/- in one accident or serious of accidents. It is further contended that there is violation of the policy, as respondent No.1 did not have valid driving licence.

3. At the time of the hearing of the appeal, none was present for the respondents. The record shows that all the respondents have been served.

4. In the issues framed, no issue was framed that the claim petition was not maintainable on the ground that it was the provisions of the Workmen's Compensation Act which were attracted and secondly there was also no issue framed that respondent No.1 did not have a driving licence.

5. In the instant case, from the pleadings, it was clear that the deceased was in the truck. The defence of the respondents No.1, 2 and 3 that the

deceased jumped out of the truck and that is how he fell out on account of his own negligence, has not been proved. In so far as relationship of the deceased with the appellants, there was no specific denial except for the general denial for want of knowledge, nor there was an issue framed as to whether the claimants/appellants herein had to prove that the deceased was their son. The issue as framed only was whether their son met with accident in consequence of the rash and negligent driving on the part of respondent No.1. The death has been established.

On behalf of the appellants, appellant No.1, a labourer examined himself. Apart from the question put as to the documents to show that the deceased was his son, there was no other questions put to this witness. The respondents did not examine any witness in support of their defence that it is the deceased who jumped out of the truck. The appellants have established that the deceased was working with respondents No.2 and 3 and that the truck was being driven by respondent No.1 which met with the accident.

6. The learned Claims Tribunal proceeded on the footing that the appellants had not proved the rashness and negligence. In my opinion, that was not at all required. It was the case of respondents No.1,

2 and 3 themselves that the deceased was sitting in the vehicle in cabin, in front and that it was the deceased who had jumped out of the truck. The respondents did not examine any witness or themselves though it was their contention that there were other labourers on the truck. Once the deceased was in the truck and fell out of the truck and died, in my opinion, the only conclusion that can be arrived at was that the deceased died in the course and out of his employment and that it could have only be on account of the door of the truck being flung open and the deceased being thrown out. This would itself disclose rashness and negligence on the part of respondent No.1. Once that be the case, the finding by the learned Claims Tribunal that there was no rash and negligent driving, will have to be set aside.

7. The learned Claims Tribunal had worked out the amount of Rs.1,50,000/-. The learned Claims Tribunal has not worked out the dependancy. The appellants had claimed that the deceased was earning Rs.1500/- per month. Respondents No.2 and 3 were the owners of the truck who had employed the deceased. They ought to have produced a document showing the earnings of the deceased. Neither did they step into the witness box, nor produced any documentary evidence of the wages earned. The respondents have kept away

the best evidence available to them. In these circumstances, oral evidence that the deceased was earning Rs.1500/- per month will have to be accepted. Though there is no documentary evidence as regards the age of the deceased, considering that the appellants themselves who are labourers, I see no reason as to why the age of the deceased should not be accepted as 22 years considering that the appellants themselves at the time of the accident were aged 50 years and 40 years respectively and their younger son was schooling. If that be the case, considering the figure of Rs.1500/-, the annual income will be Rs.18000/- and if 1/3rd is deducted, the amount would be Rs.12,000/-. Applying the multiplier of 17 and considering that the deceased may have married at the age of 28 years, the dependancy for the first 8 years could be worked out at Rs.96,000/- and for the subsequent 11 years at Rs.3600/- per annum, which will work out to another sum of Rs.39,600/-. Added to this would be the normal costs incurred for funeral and for loss of companionship Rs.14,400/-. Total compensation will thus work out to Rs.1,50,000/-, which will carry interest at the rate of 8 % per annum from the date of claim petition, which is 16.10.1989 till final payment.

7. In the light of that the following Order :

The Award of the Claims Tribunal is set aside. The Claim Petition is allowed. Respondents No.2 to 4 are directed jointly and severally to pay to the appellants compensation quantified at Rs.1,50,000/- with interest at the rate of 8 % from the date of claim petition i.e. 16.10.1989 till final payment. The amount of no fault liability paid to be adjusted from the said amount. The Insurance Company to deposit the amount, less the amount already paid towards no fault liability, before the Motor Accident Claims Tribunal, within a period of 12 weeks from today. The notice of the AWard be given by the M.A.C.T. to the appellants and payment made on they being identified. In the circumstances of the case, there shall be no order as to costs.

F.I. REBELLO, J.

ssm.